IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5243 of 2007()

CRIME NO.267 OF 2007 OF ANCHAL POLICE STATION

: APPLICANT/ACCUSED

SASIDHARAN ACHARY, AGED 54 YEARS,
S/O.PARAMU ACHARY, LEKSHMI VILASAM,
THUMBIKUNNU, EDAMULACKAL P.O.,
ANCHAL (VIA), KOLLAM DISTRICT.

BY ADV. SRI.ALAN PAPALI
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5243 of 2007

Dated this the 12th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 326 I.P.C. It is alleged that grievous hurt was caused to the defacto complainant by the petitioner with a dangerous weapon - `Uli', a work tool of the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is submitted that no grievous hurt had at all been suffered by the petitioner. It is further submitted that there is hopeless delay in the filing of the F.I.R. The counsel contends that the real incident did not take place in the manner presently alleged. The defacto complainant was in fact the aggressor and the petitioner and his family members were the victims of aggression. In any view of the matter, the petitioner may not be compelled to suffer the trauma of arrest and incarceration. Anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials available clearly show that a serious injury - 14 X 5 c.m in size on the left scapular region with cutting of the muscle and fracture was

suffered by the defacto complainant. He had been taken to the doctor on the date of occurrence itself. He had made a clear narration of the circumstances under which he had suffered the injury to the doctor. Considering the seriousness of the injury, the defacto complainant had to be referred to a higher centre for medical treatment. It is, in these circumstances, that there was some delay in the F.I.R being filed. In any view of the matter, there are absolutely no circumstances which would justify or warrant the invocation of the jurisdiction under Section 438 Cr.P.C. Grave are the allegations. Serious is the injury suffered. The petitioner may, in these circumstances, be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-